

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-218950**DATE:** July 29, 1985**MATTER OF:** Unico, Inc.**DIGEST:**

1. Protest alleging that specifications in request for proposal unduly restrict competition is untimely where not filed before closing date for receipt of initial proposals.
2. Award under solicitation for word processing system to offeror meeting technical specification as interpreted by the contracting agency is proper, since agency's interpretation is clearly reasonable when specification is considered in the context of the type of word processing system being procured.

Unico, Inc., protests the award of a contract to NBI, Inc., under request for proposals (RFP) No. F41800-84-R-8785, issued by the Air Force for the lease with option to purchase and maintenance of a word processing system at Lackland Air Force Base, Texas. Unico contends principally that the specifications in the RFP unduly restricted competition and that the awardee did not meet the RFP specification relating to spelling verification and correction. We dismiss the protest in part and deny it in part.

The RFP was issued on November 28, 1984. After a preproposal conference was held and several amendments to the RFP were issued, initial proposals from two offerors, Unico and NBI, were received on February 8, 1985. By letter dated April 2, the Air Force notified Unico that its proposal had failed to meet 30 specification requirements in the RFP. The letter detailed the areas of deficiency and requested that Unico submit its best and final offer by April 12. NBI also was invited to submit a best and final offer; its proposed equipment had been found to meet all the specifications.

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Both Unico and NBI then submitted best and final offers which again were reviewed for technical acceptability by the Air Force. Unico's offer was found deficient under 28 of the requirements; NBI's offer was found fully acceptable. The Air Force awarded the contract to NBI on May 9. Unico was notified of the award by letter dated May 10 and filed its protest with our Office on May 22.

Unico first argues that the specifications in the RFP were drafted to conform to the equipment offered by NBI and, as a result, unduly restricted competition. Unico contends specifically that one provision in the RFP, requiring that renumbering of paragraphs take place without an operator keystroke, was written to exclude Unico, whose equipment requires depression of a key for paragraph renumbering. As a corollary, Unico argues that, while its methods of performing the needed functions deviate from the methods required by the RFP specifications, its equipment nevertheless can perform the functions as well or better than NBI's equipment and at a lower price.

These arguments are untimely. The RFP contained numerous specification requirements detailing the functions, methodology and other features which an offeror's equipment and software were required to have. Unico did not file a protest challenging the allegedly restrictive nature of the specifications until after award was made to NBI. A protester who wishes to protest what it perceives as improprieties in a solicitation, however, may not simply wait to see if it receives the contract award before filing its protest. Rather, where, as here, a protest is based on alleged improprieties in the solicitation which were or should have been apparent from the face of the solicitation, our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), require that the protest be filed before the closing date for receipt of initial proposals-- in this case, February 8. Since the protest was not filed until May 22, it is untimely and will not be considered to the extent that it relates to the allegedly restrictive nature of the specifications. Kreonite, Inc., B-209750, Apr. 5, 1983, 83-1 CPD ¶ 364.

As discussed above, the final evaluation of Unico's proposal found it deficient in 28 areas. In its reply to the Air Force's April 2 letter explaining the deficiencies, Unico conceded that its equipment does not use

the methodology required by at least two of the specifications, relating to paragraph renumbering and spelling verification and correction; specifically, Unico's software does not allow paragraph renumbering without a keystroke by the operator and does not perform the spelling function in a background mode.^{1/}

The protester contends that, like Unico's own software, NBI's software does not comply with the spelling verification and correction specification. Unico argues that, because the NBI software requires the equipment operator to type the corrected word on the screen (a "foreground action"), the spelling function is not performed in the background mode as required. The Air Force disagrees, arguing that the background mode provision requires only that a spelling correction, once it is entered by the operator, be processed in the background, in effect freeing the equipment screen for use on another project while the correction is being processed. Under this interpretation, the NBI software meets the specification; the Unico equipment does not.

A system such as that specified in the RFP, which is to include only an 80,000-word dictionary and must process work containing a number of acronyms, would not usually be capable of processing spelling corrections without some input by the operator ("foreground action"). Consequently, the most reasonable interpretation of the term "performed in a background mode" as used in the spelling correction and verification specification is that word checking must be done in the background while other work can be done on the screen; it does not, as the protester contends, require that the actual correction be done automatically. Accordingly, we think that the agency's interpretation of the requirement is reasonable and we have no basis to object to its acceptance of the Unico equipment.

^{1/} At another point in its protest, Unico states without further explanation that it meets all the RFP specifications. Since Unico does not elaborate on this statement, which on its face is in clear contradiction to other statements in both its protest and its April 12 response to the Air Force, we assume it refers only to Unico's prior argument, which we have held untimely, that its equipment and software can perform as well as NBI's without conforming to the RFP specifications.

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Finally, Unico argues that it should have received award because its price was over 25 percent lower than NBI's price. The fact that Unico offered a lower price is irrelevant, since its proposal was unacceptable and Unico thus was not eligible for award. CBM Electronic Systems, Inc., B-215679, Jan. 2, 1985, 85-1 CPD ¶ 7.

The protest is dismissed in part and denied in part.

for *Signature* *for*
Harry R. Van Cleve
General Counsel